No. 75-606

Supreme Court, U. S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1975

**JAMES B. CONLISK, JR., et al.,**
*Petitioners,*

**vs.**

**ARDALE CALVIN, et al.,**
*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Petitioners have asked this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in the above-entitled case. Respondents respectfully submit this brief in opposition to the Petition.

### OPINION BELOW

The Opinion of the Seventh Circuit in this case is reported at 520 F. 2nd 1 and is reproduced in Appendix A to the Petition. The Opinion of the United States District Court of the Northern District of Illinois (The Honorable

Joseph Sam Perry, Judge), which was reversed in part and affirmed in part by the court below, is reported at 367 F. Supp. 476.

## JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

## QUESTIONS PRESENTED

1. Is a trial court precluded from granting *any* relief whatsoever against police supervisors upon allegations, if proved at trial, that the supervisors participate in the systematic condonation and encouragement of widespread unconstitutional misconduct by policemen?

2. Is the question of the possible scope of remedies ultimately available to the trial court on a complaint alleging systematic violation of constitutional rights ripe for review in the context of a motion to dismiss when there has been neither a trial nor the entry of a remedial order by the District Court?

3. Is a justicable claim stated by allegations that police supervisors participate in the operation of a disciplinary system which systematically fails to thoroughly investigate or to punish unconstitutional police misconduct and that they thereby in effect encourage widespread acts of such misconduct by their subordinates?

4. Is the amount in controversy adequately alleged for purposes of 28 U.S.C. §1331 where it is stated to exceed $10,000 and supported by specific exemplary allegations of both liquidated and unliquidated damage claims?

5. Do community organizations have standing to sue upon allegations that they operate services that receive complaints from persons aggrieved by police misconduct and seek to obtain redress for these clients; that they would



be able to reduce their efforts in processing such complaints if successful in the litigation; that they have the organizational purpose of protecting their members and clients from unconstitutional police activity; and that their members have been subject to police misconduct in the past and continue to be in danger of such misconduct?

## STATUTES INVOLVED

The applicable statutory provisions are set out in the Petition.

## COUNTER-STATEMENT OF THE CASE

The seven individual and three organization respondents (plaintiffs below) brought the present action seeking remedy for a persistent pattern of unconstitutional misconduct by Chicago policemen toward civilians. Respondents alleged in detail incidents in which the constitutional rights of the individual respondents were violated by the policemen petitioners and then alleged that the incidents of police misconduct suffered by the individual respondents "are representative and exemplary of many similar occurrences of misconduct by Chicago policemen against civilians recurring over the course of many years, each of which involves the common element of excessive or unwarranted use of physical force." Complaint, Paragraphs 15-16. Respondents further alleged that the petitioners Superintendent of Police, Police Board members and the City

> have the duty to prevent such misconduct and to discipline police officers who engage in it. However, they have failed to fulfill this duty, and have instead followed a course of conduct that condones, and in effect encourages, such abusive misconduct. Their course of conduct is manifested particularly in the operation by these defendants of a police discipline system that,

> as a pattern or practice, does not make thorough investigations of such abusive misconduct and does not take appropriate disciplinary action against police officers who engage in it. Complaint, Paragraph 1.

This course of conduct on the part of the official petitioners and the City, which in itself causes the respondents and other civilians to be deprived of constitutional rights, was described in detail in Paragraphs 20-28 of the complaint.

Respondents sought declaratory and injunctive relief on the ground that petitioners' actions and inaction violated the constitutional rights and immunities of the individual respondents and the members of the organization respondents under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution. Jurisdiction was invoked pursuant to 28 U.S.C. §§1331 and 1343. Complaint, Paragraph 2.

After originally denying petitioners' comprehensive motion to dismiss the claim for declaratory and equitable relief, the district court subsequently granted a renewed motion to dismiss on the ground that the claim was nonjusticiable under *Gilligan* v. *Morgan,* 413 U.S. 1 (1973). The Court of Appeals for the Seventh Circuit reversed the dismissal, holding that respondents' complaint seeking declaratory and injunctive relief presented a justicable question, that respondents' claim against the City of Chicago met the jurisdictional amount requirement imposed by 28 U.S.C. §1331, and that two of the three organization respondents had standing to maintain the action. However, the court below dismissed one of the organization respondents, the Afro-American Patrolmen's League, on the ground that a conflict existed between the League's prosecution of this suit and the interests of the League's members.



## ARGUMENT

### I.

### RIZZO v. GOODE DOES NOT CONTROL THIS CASE

Petitioners contend that in light of the granting of a writ of certiorari by this Court in the case of *Rizzo* v. *Goode,* No. 74-942, certiorari should be granted in this case because of the similarity between the two cases. (8-9)* Respondents submit, however, that the differences between the two cases are substantial and significant: *Goode* involves the question of the propriety of particular relief upon a particular trial record, whereas this case involves the viability of a claim against a motion to dismiss.

In the "Questions Presented" section of their brief in *Goode,* petitioners there describe the issues involved therein in the following manner:

> Is it an *abuse of the injunctive power* of the federal district courts for a court to assume control of a major aspect of the operations of a municipal police department, require the issuance of its own intra-departmental procedural directives and maintain a continuing judicial surveillance over the department's operations, particularly in the absence of any finding of any unlawful conduct attributable to petitioner? (at 3, emphasis added).

Respondents' brief in *Goode* likewise phrases the question in terms of an inquiry into whether "the District Court abuse[d] its equitable powers. . . ." Brief for Respondents, *Rizzo* v. *Goode,* at 2. Thus *Goode* concerns the ad-

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* All citations in parentheses, unless otherwise indicated, refer to the Petition or Appendix A to the Petition.

visability of a specific form of equitable relief based on specific detailed factual findings made after a complex trial. *COPPAR* v. *Rizzo*, 357 F. Supp. 1289 (E.D.Pa. 1973). By contrast, the instant case involves only the broad question of whether a request for *some* form of relief in light of an allegation of widespread unconstitutional police conduct openly condoned and, in effect, encouraged by supervisory officials presents a justiciable issue. The instant case will not attain a posture similar to that of *Goode* until the District Court (1) holds a trial on the merits (which it refused to do and which it has now been ordered to do by the Court of Appeals); (2) makes specific factual findings concerning the truth of the allegations contained in respondents' complaint; and (3) issues an order fashioning equitable relief, if any, to meet the specific needs of the situation. Even at that time the issue presented in *Goode* may not be presented in this case; whether it does depends entirely upon the nature of the relief granted.

Indeed, the Opinion below strongly suggests that it will not be, for the Court of Appeals stated that, although respondents' complaint presented a justiciable issue, "[w]e are confident that the district court will not interfere unnecessarily with the running of the Police Department. . . ." (9a). The court went on to note that, although respondents might be entitled to appropriate relief, "this relief need not necessarily be an injunction against the police." (*Id.*). Before such relief could be given, the court held, respondents must demonstrate that existing legal relief is inadequate. If liability were established, the goal of any relief given, the Court of Appeals concluded, should be "to stop deprivations of constitutional rights without unnecessary encroachment upon local government functions." (10a). The court recognized that the framing of



relief "will be a delicate and difficult process" (*Id.*) and expressed the desire "to safeguard the police from unnecessary federal court interference." (9a). *Cf., Build of Buffalo, Inc.* v. *Sedita*, 441 F.2d 284, 288 (2d Cir. 1971).

The Opinion below is thus considerably more cautious than the relief provided by the district court and approved by the Court of Appeals in *Goode*, under which, where a genuine factual dispute exists in a disciplinary proceeding, the Police Department would have to convene a quasi-judicial body to conduct a public adversary trial between the complainant and the police officer. Brief for Petitioners, *Rizzo* v. *Goode*, at 30. Such relief could be found to have imposed upon the police an undesirably cumbersome disciplinary procedure, or one not justified by the record in that case.

But the fact that a particular form of equitable relief may be inappropriate does not mean that no matter how desperately circumstances warrant, absolutely no equitable relief of any kind may be afforded to check police disciplinary laxity fostering unconstitutional police misconduct. Yet the only way the decision in the *Goode* case could control the decision in the instant case would be if this Court were to hold that under *no* circumstances can *any* form of equitable relief *ever* be justified to rectify a police disciplinary system which openly condones and fosters widespread unconstitutional police conduct. Such a result, respondents respectfully submit, would be most inadvisable, since, as the court below stated:

> To hold that suits seeking injunctions against police are non-justiciable would erect a permanent bar to relief, no matter how egregious and persistent the violations of the constitutional rights of citizens. (8a; footnote omitted).

This case differs from *Goode* also in terms of the factual findings deemed necessary to authorize injunctive relief. The allegations in respondents' complaint, which at this stage of the proceedings are assumed to be true, Fed. R. Civ. P., R. 12(b)(6), go far beyond the factual findings of Judge Fullam in *Goode*. Whereas Judge Fullam at no time explicitly found that the defendant supervisory officials had acted unlawfully, the complaint in the present case alleges that, despite notice of widespread unconstitutional police conduct, the official petitioners

> have failed or refused to fulfill their duty to regulate and control the police officers under their direction, to prevent those officers from acting in a manner that deprives persons of their rights, privileges and immunities under the Constitution and laws of the United States, and to discipline officers who commit such acts of misconduct.
>
> Complaint, Paragraph 21.

The complaint further alleged that certain of the official defendants, including the City of Chicago,

> over the course of many years, have participated in, acquiesced in or condoned a pattern or practice on the part of the police discipline system of not making thorough investigations of occurrences of unconstitutional misconduct and not taking appropriate disciplinary action against police officers who engage in such misconduct.
>
> Complaint, Paragraph 22.

Moreover, the complaint alleged that "[t]he pattern or practice on the part of the police discipline system of not making thorough investigations of occurrences of unconstitutional misconduct and not taking appropriate disciplinary action against police officers who engage in such misconduct, and the participation in, acquiescence in or condonation of this pattern or practice by Defendants"



constituted "a de facto policy on the part of these Defendants that policemen will not be disciplined at all or will be disciplined inadequately for acts of unconstitutional misconduct and . . . has the effect of encouraging policemen to commit acts of unconstitutional misconduct. . . ." Complaint, Paragraph 25.

That such allegations, if proven, establish direct violations of constitutional rights by petitioners is clear. As the Seventh Circuit held in *Schnell* v. *City of Chicago*, 407 F. 2d 1084, 1086 (7th Cir. 1969):

> [E]quitable relief is appropriate in a situation when governmental officials have notice of the unconstitutional conduct of their subordinates and fail to prevent a recurrence of such conduct.

Similarly, this Court has held that:

> [N]o State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive may be. *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 725 (1961).

Thus, if respondents prove their allegations at trial, a clear showing of unconstitutional conduct on the part of police supervisors—a finding never explicitly made in *Goode*—will have been made and will constitute the basis of some form of relief against them.

Finally, respondents' complaint specifically alleged that petitioners actively "participated in" the operation of a lax disciplinary system which had the direct consequence of increasing the acts of unconstitutional police misconduct, Complaint, Paragraphs 22 and 25, thus going well beyond contentions of mere failure to act on the part of petitioners.

Accordingly, *Rizzo* v. *Goode* does not control the disposition of this case.

## II.

## THERE IS NO CONFLICT AMONG THE CIRCUITS

Petitioners contend that the Sixth Circuit's decision in *Peek* v. *Mitchell,* 419 F.2d 575 (6th Cir. 1970), is contrary to the decision of the Seventh Circuit in the instant case and thus creates a conflict among the Circuits. As the court below correctly recognized, however, the decision in *Peek* is wholly consistent with the result in the instant case. The court in *Peek* affirmed a dismissal of plaintiffs' complaint solely on the ground that "the allegations of the plaintiffs are mere conclusions . . . unsupported by any allegation of fact." 419 F.2d at 579. By contrast, in the instant case respondents have described with painstaking detail numerous specific acts of unconstitutional police conduct and their systematic official condonation.

That the court in *Peek* would have decided the instant case just as the Seventh Circuit did is made clear by the Sixth Circuit's statement that its holding was not meant to imply "that under a sufficient complaint alleging specific deprivations of rights by such public officials that a cause of action could not be stated . . . ." *Id.* The court then quoted approvingly the statement of the Seventh Circuit in *Schnell* v. *City of Chicago,* 407 F. 2d 1084, 1086 (7th Cir. 1969): "[E]quitable relief is appropriate in a situation where governmental officials have notice of the unconstitutional conduct of their subordinates and fail to prevent a recurrence of such misconduct." Hence *Peek* presents no conflict with the decision in the instant case.



## III.

## THE COURT BELOW WAS CLEARLY CORRECT UNDER THE DECISIONS OF THIS COURT IN HOLDING THAT THE COMPLAINT IN THE INSTANT CASE STATES A JUSTICIABLE CAUSE OF ACTION

Petitioners next contend that *Gilligan* v. *Morgan, supra,* is dispositive of this case and that the Court of Appeals was in error in not following it. (12) The trial court dismissed respondents' complaint because it felt that, under this Court's decision in *Gilligan* v. *Morgan,* 413 U.S. 1 (1973), a suit for injunctive relief against widespread unconstitutional police conduct did not present a justiciable issue. The Court of Appeals reversed (5a), reasoning that "[t]o hold that suits seeking injunctions against police are non-justiciable would erect a permanent bar to relief, no matter how egregious and persistent the violation of the constitutional rights of citizens." (8a) (footnote omitted)

That this Court's decision in *Gilligan* in no way precludes the relief requested by respondents can be seen by a brief comparison of the facts in the two cases. In *Gilligan,* which grew out of the 1970 confrontation between the Ohio National Guard and Kent State University students, plaintiffs attempted to obtain continuing judicial evaluation of the appropriateness of the "training, weaponry and orders of the Ohio National Guard." 413 U.S. at 5-6. Plaintiffs further demanded "that the District Court establish standards for the training, kind of weapons and scope and kind of orders to control the actions of the National Guard." *Id.* at 6. In holding the issues presented by plaintiffs' demands to be non-justiciable, this Court emphasized the "very relevant" provision of Article I.,

Section 8, cl. 16 of the Constitution, which vests in Congress the power:

> To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively the Appointment of the Officers, and the Authority of Training the Militia according to the discipline *prescribed by Congress,* 413 U.S. at 6 (emphasis added by Court).

The Court said that "[t]he Guard is an essential reserve component of the Armed Forces of the United States, available with regular forces in time of war. The Guard also may be federalized in addition to its role under state governments, to assist in controlling civil disorders." 413 U.S. at 7 (footnote omitted). Noting that plaintiffs sought to have the judiciary review military policy, the Court stated:

> It would be difficult to think of a clearer example of the type of governmental action that was intended by the Constitution to be left to the political branches, directly responsible—as the Judicial Branch is not—to the elective process. Moreover, it is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the Legislative and Executive Branches . . . (413 U.S. at 10) (emphasis in original)

Unlike *Gilligan,* this case does not involve a dispute between the Federal judiciary and a coordinate branch of the Federal Government, a prerequisite for application of the "political question" doctrine of non-justiciability relied on by this Court in *Gilligan. Baker* v. *Carr,* 369 U.S. 186,



210, 226 (1962). The political question doctrine "rests not upon concepts of federalism but rather upon the structure of our national government—the separation of powers." *Atlee* v. *Laird,* 347 F. Supp. 689, 699 (E.D. Pa. 1972).

Also, unlike *Gilligan,* the present case does not involve a power explicitly committed by the text of the Constitution to a branch of government other than the judiciary—another prerequisite for application of the political question doctrine. *Baker* v. *Carr,* 369 U.S. at 217. Unlike *Gilligan,* the complaint in the present case does not call for judicial interference with governmental discretion respecting complex issues of training and weaponry or concerning a military unit employed primarily, if not exclusively, in cases of severe emergency. Rather, respondents here merely seek a determination and remedy concerning systematic unconstitutional misconduct by the local police.

Finally, as noted by the court below (7a), "*Gilligan* stemmed from a single incident of the Ohio National Guard's use of force, while plaintiffs here allege a persistent course of unconstitutional police conduct apparently extending over a period of years."

That *Gilligan* does not preclude judicial action in the circumstances of this case is demonstrated by this Court's decision in *Allee* v. *Medrano,* 416 U.S. 802 (1974). There this Court upheld an injunction against police intimidation, stating that where "there is a persistent pattern of police misconduct, injunctive relief is appropriate." 416 U.S. at 815, citing *Hague* v. *CIO,* 307 U.S. 496, 517 (1939). Petitioners attempt to distinguish *Allee* by arguing that the injunction in that case was directed at specific conduct. (11) But, as noted previously, at this point in the proceeding the nature and form of any injunctive relief has not been determined. See Opinion of the court below, at

8a-9a. The only pertinent issue before the Court of Appeals was whether a claim for any relief, injunctive or otherwise, against local police presented a justiciable question. This Court's decision in *Allee* is dispositive of this limited question.

It is clear, then, that the decision of the court below is in no sense inconsistent with this Court's opinion in *Gilligan*. On the contrary, the Seventh Circuit's recognition that, in the face of a widespread pattern of unconstitutional police conduct, injunctive relief is appropriate follows inextricably from this Court's holdings in *Allee* and *Hague*.

## IV.

## THE COURT BELOW WAS CLEARLY CORRECT IN CONCLUDING THAT THE COMPLAINT PROPERLY ALLEGED THE REQUISITE JURISDICTIONAL AMOUNT IN CONTROVERSY

Petitioners do not deny that a complaint for injunctive relief against the City of Chicago may properly be brought under the Constitution and 28 U.S.C. §1331. Petitioners contend, however, that respondents' allegations in their complaint that the amount in controversy exceeds $10,000 are insufficient to establish the requisite amount in controversy, arguing that no supporting factual data is provided. (17-18)

That respondents' pleading of the amount in controversy is sufficient can be seen by examining Official Form 2, Federal Rules of Civil Procedure, which includes the following: "The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars." Under Rule 84, the Forms "are sufficient under the rules. . . ." *Cf., KVOS, Inc.* v. *Associated Press*, 299 U.S. 269, 277 (1936).



Once an allegation of the jurisdictional amount is made on good faith in the proper form, the complaint will be dismissed for failure to meet the minimum amount requirement only when it appears "to a legal certainty that the claim is for less than the jurisdictional amount to justify dismissal." *St. Paul Mutual Indemnity Co.* v. *Red Cab Co.*, 303 U.S. 283, 288 (1938). There is absolutely no basis upon which to conclude that respondents' claim is insufficient "to a legal certainty."

Indeed, notwithstanding petitioners' argument that there are no supporting allegations, the complaint makes clear that the amount in controversy with respect to each respondent is worth far more than $10,000. As stated by the court below (13a-14a):

> Plaintiffs' complaint asserts seven instances of police misconduct of the type that they seek to prevent through this suit. In each, the plaintiffs assert that the unconstitutional acts of the police resulted in physical injury requiring medical treatment. While plaintiffs list the dollar value of some of the elements of damages, these claims are not exclusive, so that the suits are essentially unliquidated damage claims apparently involving pain and suffering, as well as other intangibles. Some complain of false imprisonment, Fourth Amendment violations, lost wages or legal fees, incurred as a result of the misconduct. . . . Since the complaint alleges that the plight of the seven named plaintiffs is exemplary of the type of invasion of constitutional rights that the relief sought here seeks to prevent, it follows that the constitutional rights which the plaintiffs allege would be protected by the success of this suit have been satisfactorily shown to be worth $10,000.

Central to respondents' complaint is the desire to protect their constitutional rights to be free from unwarranted attacks on their persons and harassment by police.

Though precise valuation of such rights may be difficult, there can be little question that their value is far in excess of the jurisdictional minimum. See, e.g., *Spock* v. *David,* 469 F. 2d 1047 (3d Cir. 1972). Moreover, the value of the suit to the defendant City of Chicago is clearly in excess of $10,000 since, if respondents' request for injunctive relief were granted, substantial expenditures of the City's police discipline system would have to be reallocated. It is well established that the requisite jurisdictional amount requirement may be met by looking to the value of the controversy to the defendant, as well as to plaintiff. See, e.g., *Ronzio* v. *Denver & R.G.W. R.R.,* 116 F.2d 604 (10th Cir. 1940).

## V.

## THE COURT BELOW PROPERLY HELD THAT RESPONDENTS CONCERNED CITIZENS FOR POLICE REFORM AND THE CHICAGO URBAN LEAGUE HAD STANDING TO BRING THIS ACTION

Finally, petitioners contend that two organization respondents lack standing. (18-19)

As summarized by the Court of Appeals, the basis for standing of the organization respondents is as follows:

> All three of the organizational plaintiffs operate services that receive complaints from persons aggrieved by police misconduct and seek to obtain redress for these clients. The three organizations allege that they would be able to reduce their efforts in processing such complaints if defendants were required to fulfill their constitutional obligations. It is also alleged that, in one form or another, each of these plaintiffs has as a purpose of its organization the protection of its members and clients from unconstitutional police activity. Plaintiffs Concerned Citizens for Police Reform ("CCPR") and Chicago Urban League ("Urban League") allege that their members have been subject to the police misconduct that this suit seeks to remedy in the past and continue to be in danger of such misconduct. Further, some of the named individual plaintiffs in this suit are alleged to be members of CCPR. (15a)



The court below was correct in holding that CCPR and the Urban League have standing to maintain this action. The allegations in the complaint summarized above establish that they have a sufficient "personal stake in the outcome of the controversy" (*Baker* v. *Carr,* 369 U.S. 186, 204 (1962)) to ensure that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution." *Flast* v. *Cohen,* 393 U.S. 83, 101 (1968). In light of the complaint's allegations, respondent organizations have suffered the requisite "injury in fact" (*Sierra Club* v. *Morton,* 405 U.S. 727, 733-35 (1972)) as a result of petitioners' challenged conduct.

## CONCLUSION

For the reasons stated above, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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